

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI**

SUZANNE DEGNEN, D.M.D., P.C.,	)	
	)	
Plaintiff,	)	Civil Action No. <u>4:15-cv-1372</u>
	)	
v.	)	(State Court No. 15SL-CC00541)
	)	
DENTAL FIX RX LLC,	)	
DAVID ANTHONY LOPEZ, and	)	JURY TRIAL DEMANDED
JOHN DOES 1-10,	)	
	)	
Defendants.	)	

**NOTICE OF REMOVAL**

Defendants, Dental Fix RX, LLC (“Dental Fix”) and David Anthony Lopez (“Lopez”) (collectively, “Defendants”), by and through their undersigned counsel, hereby give notice of removal of the above-captioned matter from the Twenty-First Judicial Circuit Court of St. Louis County, Missouri to the United States District Court for the Eastern District of Missouri, pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446 and 1453. In support of removal, Defendants state as follows:

**Background**

1. On July 1, 2015, Plaintiff Suzanne Degnen, D.M.D., P.C. filed her Amended Class Action Junk-Fax Petition (“Petition”) against Defendants, styled *Suzanne Degnen, D.M.D., P.C. v. DentalFix RX LLC, et al.* [Case No. 15SL-CC00541; Division 11] (the “State Court Action”)<sup>1</sup>, in the Twenty-First Judicial Circuit Court of St. Louis County, Missouri, and also filed her Motion for Class Certification.<sup>2, 3</sup>

---

<sup>1</sup> A true and correct copy of the Petition and Summons issued to Defendants are attached hereto as Exhibit “A.”

<sup>2</sup> A true and correct copy of the Motion for Class Certification is attached hereto as Exhibit “B.”

2. Dental Fix and Lopez were served with the Petition in the State Court Action on August 5, 2015. This Notice of Removal is being filed within thirty (30) days of receipt of the Petition as required by 28 U.S.C. § 1446(b).

3. The Petition alleges a cause of action against Defendants for violation of the Telephone Consumer Protection Act of 1991, as amended by the Junk Fax Prevention Act of 2005, 47 U.S.C. § 227 et seq., and the regulations promulgated thereunder (“TCPA”).

### **Basis of Federal Jurisdiction**

4. This action is removable pursuant to 28 U.S.C. § 1441(a), because it is a civil action over which this Court has original federal question jurisdiction under 28 U.S.C. § 1331, which provides that “district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

5. A federal question is apparent from the face of the Petition and existed both at the time the State Court Action was filed and at the time that this Notice of Removal is being filed.

6. Plaintiff brings this action under the TCPA.

7. Upon information and belief, this action is also removable pursuant to 28 U.S.C. § 1332(a).

### **Procedural Considerations**

8. Defendants are filing this Notice of Removal within thirty (30) days of the receipt of the Complaint, in accordance with 28 U.S.C. § 1446(b).

---

<sup>3</sup> A true and correct copy of the original petition filed in the State Court Action on February 13, 2015 is also attached hereto as Exhibit “C.” The original petition was never properly served upon Defendants.

9. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81-2.03, Defendants file herewith as Exhibit D true and accurate copies of all process, pleadings, and orders filed in the state court, including the Petition.

10. Pursuant to Local Rules 81-2.03 and 3-2.02, Defendants file herewith the appropriate filing fee, the Civil Cover Sheet, an Original Filing Form, and a Disclosure of Corporation Interests Certificate.

11. Pursuant to 28 U.S.C. § 1446(d) and Local Rule 81-2.03, Defendants will file proof of filing this Notice of Removal with the Clerk of the Twenty-First Judicial Circuit Court of St. Louis County, Missouri and proof of service on all adverse parties.

12. Venue is proper in this district under 28 U.S.C. § 1441(a), because this district and division embrace the place in which the removed State Court Action has been pending.

WHEREFORE, based on the foregoing, DENTAL FIX RX, LLC and DAVID ANTHONY LOPEZ hereby remove the above-referenced action from the Twenty-First Judicial Circuit Court of St. Louis County, Missouri to the United States District Court for the Eastern District of Missouri.

Dated: September 3, 2015

Respectfully submitted,

By: /s/ Nicole S. Zellweger  
**NICOLE S. ZELLWEGER**, Missouri Bar No. 56361  
**STINSON LEONARD STREET LLP**  
7700 Forsyth Blvd., Suite 1100  
St. Louis, MO 63105-1821  
T: (314) 719-3082  
F: (314) 259-3982

-AND-

**ZARCO EINHORN SALKOWSKI & BRITO, P.A.**  
100 S.E. 2<sup>nd</sup> Street, Suite 2700  
Miami, Florida 33131  
T: (305) 374-5418  
F: (305) 374-5428  
**ROBERT M. EINHORN**  
Florida Bar No. 858188  
reinhorn@zarcolaw.com  
**KAARI GAGNON**  
Florida Bar No. 46106  
kgagnon@zarcolaw.com  
(To seek Pro Hac Vice Admission)  
*Counsel for Defendants Dental Fix RX, LLC  
and David Anthony Lopez*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 3, 2015, I served by electronic mail and U.S. mail and electronically filed the foregoing with the Clerk of Court using the Court's CM/ECF system, which will send notification of such filing to:

Ronald J. Eisenberg  
**SCHULTZ & ASSOCIATES, LLP**  
640 Cepi Drive, Suite A  
Chesterfield, Missouri 63005  
Telephone: 636-537-4645  
Fax: 636-537-2599  
reisenberg@sl-lawyers.com  
*Attorneys for Plaintiff*

/s/ Nicole S. Zellweger